



21, 23].

Plaintiff now purports to move for summary judgment in this closed case. [Doc. 24]. As grounds, Plaintiff states that, at the time he filed his Complaint, he “was only aware of plain viewing of ‘minor bruising, pain and scarring,’” and the action was dismissed “before the discovery phase which would have permitted Plaintiff per Rule 35, Fed. R. Civ. P. to demand a physical examination.” [Id. at 1-2]. Further, such examination “may have shown ... the diagnosis that was declared on 9 June 2009 by WAYNE MRI clinic[;]” that is, “injuries of ‘disc herniation’ and ‘disc bulging.’” [Id. at 2]. Plaintiff further argues that because Defendants never appeared in this matter, “the facts at issue in this case have been and remain uncontested and undisputed materially.” [Id. at 3]. And, if the Court were to order that Defendants’ failure to answer Plaintiff’s Complaint was “equivalent to an admission of guilt or evasive answer that leaves the facts at issue uncontested,” then summary judgment would be “appropriate.” [Id.].

The Court will deny Plaintiff’s motion. One cannot move for summary judgment in a closed case with no operative Complaint, as there is nothing to adjudicate. Moreover, Plaintiff’s original Complaint was dismissed for failing to state a claim for relief in 2008. Defendants did not fail to answer Plaintiff’s Complaint. Rather, they had no duty to answer a Complaint that was dismissed and were unlikely even aware it was ever filed. Plaintiff would be well-served to await the Fourth Circuit’s adjudication of his most recent appeal and is admonished against filing any further motions for relief in this action, as they likely have no merit and may be summarily denied.

**ORDER**

**IT IS, THEREFORE, ORDERED** that Plaintiff's "Motion for Summary Judgment"

[Doc. 24] is **DENIED**.

**IT IS SO ORDERED.**

Signed: May 28, 2024

A handwritten signature in black ink, reading "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen  
United States District Judge

